

REMARKS

Claims 1-14, 16-22, 24-28, and 30-39 are pending in the application. No claims have been cancelled. Claims 24 and 25 have been amended. No claims have been added. Claims 1-14, 16-22, 24-28, and 30-39 accordingly remain pending in the application.

35 U.S.C. § 112 Rejections

Claims 24-28 stood rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant has amended claims 24 and 25 to correct the dependency on a cancelled claim. The rejections are thus believed to be overcome.

35 U.S.C. § 102 and 103(a) Rejections

Claims 1-7, 16-21, 30, 33, and 35-38 stood rejected under 35 U.S.C. §102(e) as being anticipated by Krishnan (US 6,961,341). Claims 8-14, 22, 24-28, 34 and 39 stood rejected under 35 U.S.C. §103(a) as being unpatentable over Krishnan (US 6,961,341) and Smith (US 5,878,224). Claims 31 and 32 stood rejected under 35 U.S.C. §103(a) as being unpatentable over Krishnan (US 6,961,341) and “Getting Started with the Java Dynamic Management Kit 4.2” (DMK). Applicant respectfully traverses these rejections and requests reconsideration in view of the following discussion.

Claim 1 recites a method that includes, in part:

- “b1. evaluating a first condition, which involves whether the server operation parameter passes a first threshold value in a first direction, and
- b2. evaluating a second condition, which involves whether the server operation parameter passes a second threshold value in a second direction, wherein the second condition includes determining that the second direction is opposite to the first direction, and extends from the first threshold value to the second threshold value, ...”
(Emphasis added).

It is noted that evaluating either the first or the second condition involves determining a direction and the second condition explicitly includes a determining step that the second direction is opposite to the first direction. On page 4 of the present Office Action, the Examiner suggests Krishnan teaches

- “b1. evaluating a first condition, which involves whether the server operation parameter passes a first threshold value in a first direction, and (Krishnan, col. 15, lines 39-56, where the server becomes overloaded by passing a first threshold value in a first direction; see also fig. 11 and col. 9, lines 40-64)
- “b2. evaluating a second condition, which involves whether the server operation parameter passes a second threshold value in a second direction, wherein the second condition includes determining that the second direction is opposite to the first direction, and extends from the first threshold value to the second threshold value, (Krishnan, col. 15, lines 39-56, where the server is evaluated for passing a second threshold value in an opposite direction; see also fig. 11 and col. 9, lines 40-64).”

However, Applicant disagrees. Krishnan discloses a system in which first and second threshold values divide bandwidth usage into three zones. Krishnan determines throttling actions based on the zone in which bandwidth is being used. More specifically, Krishnan discloses

“The BT system 70 preferably employs an adaptive, hierarchical throttling strategy. In one preferred technique, the administrator establishes threshold zones based on the threshold T and an offset value .delta. above and below the threshold T (i.e., $T \pm \delta$). The result is a three-zone control area subdivided by two thresholds (i.e., $T - \delta$ and $T + \delta$).”

FIG. 11 illustrates the tiered control strategy. The vertical axis represents bandwidth usage, measured in terms of I/O activity as the number of bytes being passed to or from a virtual object within a predefined timeframe. If the bandwidth being used by the virtual service is less than the first threshold (i.e., the first zone), no throttling actions are taken. If the bandwidth usage exceeds the first threshold but is less than the second threshold (i.e., the second zone), a first set of throttling actions is taken. If the bandwidth usage exceeds a second threshold higher than the first

threshold (i.e., the third zone), a second set of throttling actions is taken.” (Krishnan, col. 15, lines 39-56).

As may be seen from the above, Krishnan merely measures bandwidth usage and identifies a corresponding zone. Throttling action is based on the identified zone. However, in contrast to the presently claimed invention, Krishnan’s system does not include “determining that the second direction is opposite to the first direction.” Krishnan neither discloses nor suggests any such features. Accordingly, Krishnan fails to disclose “evaluating a second condition, which involves whether the server operation parameter passes a second threshold value in a second direction, wherein the second condition includes determining that the second direction is opposite to the first direction.” Similarly, Krishnan fails to disclose “evaluating a first condition, which involves whether the server operation parameter passes a first threshold value in a first direction,” as is recited in claim 1. For at least these reasons, claim 1 is patentably distinguishable from the cited art. As claims 16, 35, and 36 include features similar to those discussed above, each of claims 16, 35, and 36 is patentably distinguishable for at least the above reasons as well.

In addition to the above, the dependent claims recite further features not found in the cited art. For example, claim 3 recites:

“The method of claim 1, wherein the third condition of step c. comprises the fact the second condition has not been verified during a grace period after the first condition has been verified, and the fourth condition of step d. comprises the fact the second condition has been verified after the third condition has been verified.”

On page 5 of the present Office Action, the Examiner suggests these features are taught by Krishnan at “col. 16, lines 4-24 where input request rejection is initiated; col. 9, lines 40-64; see e.g., col. 16, line 60 to col. 17, line 37 and fig. 13.” However, Krishnan merely discloses measuring a histogram of bandwidth usage. Each data point in the histogram is a measurement of bandwidth usage in a particular time interval. Each time interval’s measured value is independent of other time intervals. There is no teaching or

suggestion of verifying a first condition and subsequently observing a grace period in which to determine that a second condition has or has not been verified. Accordingly, Applicant finds no teaching or suggestion in Krishnan that “the third condition of step c. comprises the fact the second condition has not been verified during a grace period after the first condition has been verified,” as is recited in claim 3. For at least these additional reasons, claim 3 is patentably distinguishable from the cited art. As claims 18 and 37 include features similar to those discussed above, claims 18 and 37 are patentably distinguishable for at least the above reasons as well.

Also, claim 5 recites the additional features:

“wherein step b2. is performed within a time period starting upon verifying the first condition at step b1., and terminating upon verifying the fourth condition at step d.”

On page 5 of the present Office Action, the Examiner suggests these features are taught by Krishnan at “col. 16, lines 4-24 where input request rejection is initiated; col. 9, lines 40-64; see e.g., col. 16, line 60 to col. 17, line 37 and fig. 13).” However, Krishnan does not describe any time relationship between the evaluation of a first condition and the evaluation of a second condition. Accordingly, Applicant finds no teaching or suggestion in Krishnan of “wherein step b2. is performed within a time period starting upon verifying the first condition at step b1., and terminating upon verifying the fourth condition at step d,” as is recited in claim 5. For at least these additional reasons, claim 5 is patentably distinguishable from the cited art. As claim 18 includes features similar to those discussed above, claim 20 is patentably distinguishable for at least the above reasons as well.

Still further, claim 14 recites “The method of claim 9, wherein steps a1. and a2. are performed at a third rate, wherein the third rate is not lower than the first rate.” Krishnan-Smith are cited as teaching these features, in particular Smith col. 8, lines 13-34). However, Applicant finds no mention anywhere in Smith of performing measurements at different rates. Smith is silent as to any particular choice of particular

rate and does not disclose a third rate that is not lower than a first rate. Nor are these features found in Krishnan. Accordingly, the combination of Krishnan and Smith do not disclose such features and a *prima facie* case of obviousness has not been established.

In light of the foregoing amendments and remarks, Applicants submit that all pending claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. If a phone interview would speed allowance of any pending claims, such is requested at the Examiner's convenience.

CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 501505/5681-78600/RDR.

Respectfully submitted,

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